IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9602 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL CORPORATI-ON

Versus

HIRABHAI DEVABHAI

Appearance:

1. Special Civil Application No. 9602 of 1993

MR DIPAK C RAVAL for Petitioner No. 1

MR MAHENDRA K PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.D.C.Rawal on behalf of the petitioner Corporation and learned advocate Mr.Mahendra Patel for respondent.

#. In the present petition, the petitioner has challenged the order passed by the Labour Court, Ahmedabad in Recovery Application No.1557 / 1990 dated 15th January, 1993 wherein the labour court has directed the petitioner to pay the remaining salary of Rs.7800/to the respondent workman within one month from the date of publication of the order and the labour court has also awarded the cost of Rs.250/- in favour of the respondent workman. Against the present petition, affidavit-in-reply has been filed by the workman, this Court has issued Rule and expedited hearing of the matter and meanwhile and also granted ad-interim relief in terms of para-7 vide order dated 16th August, 1994, meaning thereby, the order impugned is stayed.

#. Learned advocate Mr.D.C.Rawal for the petitioner has submitted that recovery application has been filed by the respondent workman under Section 33[C][2] of the Industrial Disputes Act, 1947. The claim of the workman is vague and not definite for which period the salary was required to be paid by the petitioner, in other words, the claim is not for specific period. It is also contended that no correct facts were disclosed before the labour court. Even learned advocate Mr.Rawal submitted that the labour court has also not made any effort to find out that for which period the recovery application is filed by the workman. He also submitted that there is policy in the Corporation in case if any employee is declared unfit prior to two years from the date of retirement, then, such application may be considered by the Corporation for the compassionate appointment. However, he disputed this part that the respondent workman was declared unfit by the Medical Certificate. He also submitted that from 1st August, 1962 to 31st March, 1990, the date of retirement of the workman, records have been produced by the petitioner wherein there is no any entire spell of six months or two spells of three months in the record and the workman had filed this application after his retirement in the year 1991. Learned advocate Mr.Rawal submitted that service book of the workman was produced by the Corporation before the Labour court and relevant records were also produced, even then the labour court has committed gross error in granting the recovery application in favour of the workman. He raised legal contention that in recovery application, unless right is adjudicated by any other forum and pre existing right is not established by the workman before the labour court, then recovery application is not maintainable. For this legal proposition, he relied upon three decisions reported in

[i] Municipal Corporation of Delhi v. Ganesh Razak, reported in 1995 [1] SCC 235; [ii] Punjab Beverages Pvt. Ltd. v. Suresh Chand and Another, 1978 [2] SCC 144 and [iii] Management of Reserve Bank of India v. Bhopal Singh Panchal reported in 1994 [1] SCC 541. He read over the principles decided by the Apex Court in all three cases that unless right or claim is examined or adjudicated by the competent authority and / or forum or the Court strictly, recovery application is not maintainable and recovery Court is not having any power to adjudicate the issue or claim of the workman. He also submitted that recovery court is like an executing Court and therefore, prior adjudication being condition precedent which is not in the present case and therefore, according to him, the labour court has committed gross error in granting the recovery application in favour of the workman. Except the contentions recorded above, none other submissions made by the learned advocate Mr.Rawal before this Court.

#. Learned advocate Mr.Mahendra Patel for the respondent has submitted that labour court has rightly passed the order in favour of the respondent workman. It is contended that due amount of six months, for which, the respondent workman had actually worked and for that, no payments were made to the respondent workman and that was legally pre existing right which has been established by the workman on the basis of the oral evidence led before the labour court. Therefore, according to him, it is not fresh or new right, has been examined by the labour court but it was due amount and pre existing right of the workman to receive the salary when he worked with the corporation for a period of six months. That said legal right has been denied by the Corporation and that is how the recovery application was filed by the workman before the labour court. Learned advocate Mr.Patel has submitted that any claim for that recovery application is filed by the workman and merely it has been objected by the employer that is not enough to decide the jurisdiction of the labour court under Section 33 [C][2] of the Industrial Disputes Acts, 1947. He also emphasized that ultimately the Court has to consider that this amount which has been claimed is due legally in favour of the workman or not. Whether the claim of the workman is based on the statutory provisions or not, then the workman can claim directly the amount by way of filing application against the employer. Therefore, according to him, no error has been committed by the labour court while passing such order in favour of the workman which requires no interference by this Court while exercising the jurisdiction under Article 227 of

the Constitution of India.

#. I have considered submissions made by the learned advocates for the parties. I have also considered and gone through the decisions relied upon by the learned advocate Mr.Rawal. It may be noted that this Court is in full agreement with the ratio laid down by the Apex Court in above referred three cases as relied upon by the learned advocate Mr.Rawal. The scope of Section 33[C][2] has been examined by the Apex Court which is limited one and unless there is adjudication or due legal right is established, direct recovery is not maintainable. Now, in light of the facts of the present case, it is clear that the workman had filed recovery application on 20th June, 1990 after retirement. On 1st April, 1990 the workman had actually worked for more than 35 years being Safai Kamdar in Class-IV category. According to the workman, on behalf of the Corporation, on number of occasion, the Officer concerned had given him threat that he is not fit for performing the work which was entrusted to him by the Corporation. However, the grievance of the workman before the labour court that no termination order has been passed against the respondent workman and though the work was not given to the respondent workman for a period of six months and therefore, the respondent workman had filed recovery application before the labour court. The reply was given by the petitioner Corporation on 23rd September, 1991 vide Exh.11 and denied the claim of the respondent workman. The workman was made permanent on 1st October, 1964 and according to the Corporation, he retired on 31st October, 1990. However, learned advocate Mr.Rawal has submitted that it was wrongly typed in the reply but actually the workman had retired on 1st April, 1990. That at the time when the workman had retired, amount of gratuity and other benefits were paid to the respondent workman. The claim of the workman has been disputed by the petitioner Corporation. Before the Labour Court, the respondent workman had produced certain documents vide Exh.19 and 20. The petitioner Corporation has also produced service book of the workman vide Exh.18 and certain resolutions were also produced vide Exh.19/1 to 19/2. Thereafter, the workman was examined before the labour court vide Exh.13 and on behalf of the Corporation, one witness Shri Bhupendra Shantilal was examined by the Corporation. Thereafter, evidence was closed by the both the parties. Thereafter, the labour court has examined the merits on the basis of the oral and documentary evidence. The labour court has appreciated the oral evidence of the Corporation and come to the conclusion that the petitioner Corporation has not established before the

labour court that the respondent workman had remained on leave without wages because the witness has given deposition that this fact will be replied by him after examining the service book of the workman. Therefore, the labor court has come to the conclusion that though service book was produced by the Corporation vide Exh.18, even though the witness of the Corporation has not given clear deposition in respect of the fact whether the workman had remained on leave without any wages for the said period. The labour court has further observed that if the workman has remained without wages on leave, then there must be some entry ought to have been made in the service book. The period which was specified by the workman, was not specified by the Corporation. According to the workman, for a period of three months, the workman was not given any work though the workman was ready and willing to do work and subsequently upto three months, the respondent workman was allowed to work by the Corporation and this being six months period as per the claim of the respondent workman and on the basis of this evidence the labour court has come to the conclusion that the work was entrusted to the workman by the Corporation and the workman was not able to perform it and other work was not entrusted to the workman by the Corporation. Therefore, the Corporation has deliberately harassed the workman by not providing proper work which could have been properly done by the workman and therefore for a period of six months, no work was taken out from the workman and no work was given to the workman and in between, service of the workman was also not terminated by the Corporation and as such, no suspension order has been issued by the Corporation during this period and no show cause notice was served on the workman to the effect that during this six months period, the workman had remained on unauthorised absence and even it was not case of the petitioner Corporation before the labour court that the workman had voluntarily not reported for duty. Therefore, fact which cannot be ignored that the workman was not entrusted the work and therefore, he was not able to perform the work and there was denial by the Corporation for not providing the work though he was confirmed employee and as such, there is no other defence of the Corporation. That no oral evidence was produced by the Corporation before the Labour Court and as such, no documentary evidence was produced on record. Therefore, ultimately the labour court has appreciated all the evidence and come to the conclusion that the petitioner though permanent employee remained without work for a period of six months and there was no fault on the part of the workman and therefore, the labour court has granted salary of six months period in favour of the

workman.

#. The petitioner Corporation has produced the document Annexure-D, the list of leave without wages for a period from 1st August, 1962 till 1st April, 1990 which is at page.26 and 28. I have perused this list wherein it is shown the number of days the workman remained absent without wages. It is necessary to consider that at page.28 the details has been given from July, 1980 that there is no details for subsequent period from November, 1980 to July, 1982, July, 84, November, 1985 and September, 1987, November, 1987 and November, 1989. What happened during the period from November, 1987 to November, 1989 for a period of more than one year and what happened from November, 1989 to 1st April, 1990, no details have been given by the Corporation in the list which has been produced by the Corporation before this Court, meaning thereby, that no complete detail has been given by the Corporation and in absence of such details, the petitioner Corporation was not able to justify that the workman himself had voluntarily remained on leave without wages.

#. In view of these facts, once the labour court has appreciated the oral and documentary evidence and believed the case of the workman that he was permanent workman remained without work and without salary, for that, there is no justification from the Corporation that the workman remained without work and salary for the reasons that no allegation is made by the Corporation against the workman that he was on leave without wages and he remained unauthorisedly absent and he had not reported for work and as such no defence and no documentary evidence in support of such allegation was produced by the petitioner Corporation before the labour court. Therefore, according to my opinion, when a permanent workman remained without work and salary, for that, there is no justification established by the Corporation to the satisfaction of the labour court, in such circumstances, the labour court is just and right to grant salary of a period of six months to the permanent employee which has been denied by the Corporation because it was pre existing right of the workman to receive the work and the salary but to entrust the work to the workman or not, is discretion of the employer but it is legal obligation on the part of the employer to provide salary, which is not fulfilled by the Corporation in the instant case which was legally due amount, rightly granted in favour of the workman by the labour court, for that, the labour court, in my opinion, has not committed any error and therefore, no interference of this Court is

warranted while exercising the powers under Article 227 of the Constitution.

However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

#. Therefore, according to my opinion, there is no substance in the present petition and same is required to be dismissed and hence, it is ordered accordingly. Rule stands discharged with no order as to costs.

Interim relief, if any, stands vacated. Consequently, the petitioner is directed to comply with the impugned order and accordingly shall pay Rs.7800/- to the respondent workman within one month from the date of receipt of copy of this order, if so far not implemented.

Date : 1.9.2003 [H.K.Rathod, J.]

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